



S.A.No. 826 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No. 826 of 2006

WEB COPY

1. S. Bakthavatchalam(died)

2. B. Vasanthi

( A1 died. A2 bring on record as legal  
heir of the deceased A1 vide Court order  
dated 06.04.2022 made in C.M.P.No.20625 of  
2021 in S.A.No.848 of 2006 by RHJ)

... Appellant

Vs.

1. Devika(deceased)

2. V.Sivaprakasam(deceased)

3.S. Devendran

4. S. Anand Kumar

5. S. Murali

6. G. Prema

( R2 to R6 bring on record as legal  
heir of the deceased R1 vide Court order  
dated 25.09.2013 made in M.P.No.1 of 2008 in S.A.No.826 of 2007)  
( R2 died R3 to R6 already on record as Lr's of R2 memo recorded vide order  
of the Court dated 03.04.2023 in S.A.No.826 of 2006 ( RHJ)

.. Respondents



S.A.No. 826 of 2006

**Prayer:** This petition is filed Under Section 100 of the CPC to set aside the Judgment and Decree dated 07.04.2006 in A.S.No.496 of 2004 passed by V Additional Judge, City Civil Court, Chennai which is revised by the Judgment and Decree dated 24.04.2003 in O.S.No.9044 of 1995 passed by XVI Assistant Judge, City Civil Court Chennai and allow the appeal

For Appellant : No Appearance  
For Respondents-4 : Mr.R.Siddharth  
For Respondent 3,5 and 8 : Mrs.R.Srividhya

### **JUDGMENT**

This petition has been filed by the appellant to set aside the Judgment and Decree dated 07.04.2006 in A.S.No.496 of 2004 passed by V Additional Judge, City Civil Court, Chennai which is revised by the Judgment and Decree dated 24.04.2003 in O.S.No.9044 of 1995 passed by XVI Assistant Judge, City Civil Court Chennai.

2.For the sake of convenience the parties herein are arrayed as per the ranking before the Trial Court:

The suit property bearing T.S.No.19/4 Block No.1, bearing plot No.56, Peravallur,Vetri Nagar, measuring to an extent of 2400 sq ft and the plaintiff

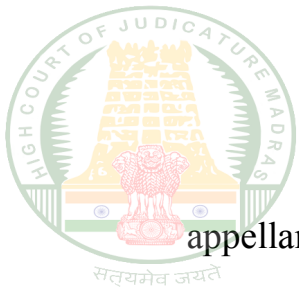


S.A.No. 826 of 2006

WEB COPY

has been in continuous possession of the schedule property by putting up a super structure hut for the purpose. The defendant approached the plaintiff seeking her permission to occupy the hut. Being the brother, the plaintiff permitted him to enter and use the hut on condition that he should vacate and deliver vacant possession to the plaintiff, when she required the same. The plaintiff demanded the defendant to quit and delivery the vacant possession of the suit property. But the defendant refused to vacate and claiming declaration that the suit property is in his absolute possession and enjoyment saying that the settlement deed 16.02.183 is not valid and not binding on him. Therefore, the plaintiff filed a suit in O.S.No.9044 of 1995 for declaration of her right, title and interest in the schedule mentioned property for delivery of possession and the said suit was dismissed on 24.04.2003 by the XVI Assistant Judge, City Civil Court Chennai. Challenging the same A.S.No.496 of 2004 was filed by theDevikaa/ deceased/ before the V Additional Judge, City Civil Court, Chennai and the learned Judge has allowed the appeal vide order dated 07.04.2006. Aggrieved over the same the appellant is before this Court by way of this second appeal.

3.After filing of this second appeal the first



S.A.No. 826 of 2006

appellant/S.Bakthavatchalam passed away. Hence, the second appellant who is the wife of the first appellant has been impleaded. However, There is no appearance on the side of the appellant.

4.It is the contention of the contesting respondents herein that the suit property belongs to them by virtue of the deed of irrevocable settlement deed dated 16.02.1983 executed by her father late Shanmugam in her favour and registered as document no. 540/1983 and possession of the same was delivered to her in pursuance therefore. She has been in possession of the property from 16.02.1983 by putting up a hut for her purpose. The defendant approached plaintiff seeking her permission to occupy the hut. Being her brother of this defendant who had also no immediate plan of putting the property for better and profitable use permitted him to use the hut on condition that he should vacate and deliver to her vacant possession of the said property when she required the same, but in the recent years he turned hostile refused to vacate the same. It is denied that the plaintiff is in absolute possession and enjoyment of the suit property and the said Shanmugam was under the care and protection of the plaintiff. The entire allegations are all absurd and are not admitted. The settlement in favour of this defendant is out of natural love and affection which the father had for his daughter till his last

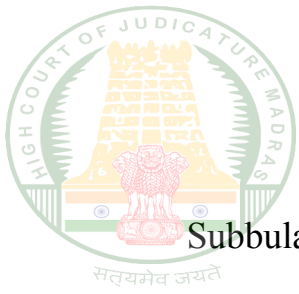


S.A.No. 826 of 2006

breath. The plaintiff gives thoroughly wrong picture for the purpose of this suit. The plaintiff is not in absolute possession and enjoyment of the suit property from the date of purchase. He has nothing to do with his father's purchase, possession and enjoyment till he delivered the same on date of settlement in favour of this defendant. Hence, the plaintiff is not entitled to claim any relief as prayed for. Hence, this second appeal is liable to be dismissed.

5. Before adverting further it would be relevant to go through the Judgment passed by the first Appellate Court. The learned Judge has made an observation that there is no dispute with regard to the relationship of the parties namely Devika, Bhaktavatsalam, Sivaprakasam and Ganesan. One late Shanmugam is the father of Devika, Bhaktavatsalam, Ganesan. That goes to show that Bhaktavatsalam and Ganesan are the sons and Devika is the daughter of the Late Shanmugamm. So also Sivaprakasam is none other than the husband of Devika and Ganesan is also the son in law of Devika and Sivaprakasam.

6. There is no dispute that the suit property was purchased by the said late Shanmugam under a registered Sale deed dated 03.07.1972 from one



Subbulakshmi and her sons. The said Devika claims the suit property under

x.A1 Original Settlement deed marked in O.S.No.9044 of 1995.

Mr.Bhagavatsalam, her brother denies the settlement deed and even if there is any such settlement deed it was never acted upon in accordance with law.

7. It is pertinent to note that in O.S.No.9044 of 1995 the Trial Court has found that the plaintiff therein had not placed any evidence on record to prove that the settlement deed Ex.A1 had been acted upon and hence the settlement is void and also held that no evidence had been let in to prove that the suit is barred by limitation and hence rejected the contention of the defendant in that aspect.

8. This Court while admitting the second appeal has raised the following Substantial questions of law:

- 1. Whether the Courts below has properly construed the provisions of Sections 122 and 123 of Transfer of Property Act 1881?*
- 2. Whether the Court below has properly applied the import of meaning under Section 34 of Indian Evidence Act regarding the admissions made by the respondent therein?*
- 3. Whether the Court below properly appreciated the scope of the provision found in Order 20 Rule 12 of C.P.C regarding mean profits and future damages?*



S.A.No. 826 of 2006

**WEB COPY** 9. It is just and necessary to go through the Sections 122 and 123 of Transfer of Property Act 1881, Section 34 of Indian Evidence Act and Order 20 Rule 12 of C.P.C regarding mean profits and future damages and the same is extracted hereunder:

#### Sections 122 and 123 of Transfer of Property Act 1881

*122. “Gift” defined - “Gift” is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person called the donor to another, called the donee and accepted by or on behalf of the donee*

*123. Transfer how effected- For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.*

*For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.*

*Such delivery may be made in the same way as goods sold may be delivered.*

#### Section 34 of Indian Evidence Act

*Section 34 of Indian Evidence Act states that entries in books of accounts, including electronic records, that are regularly kept in the course of*



WEB COPY



S.A.No. 826 of 2006

*business are relevant evidence in Court. However, these entries alone are not sufficient to prove liability; they must be corroborated by other independent evidence to be effective in charging a person with liability.*

Order 20 Rule 12 of C.P.C regarding mean profits and future damages

Decree for possession and mesne profits:

*(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-*

- (a) for the possession of the property;*
- (b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;*
- (ba) for the mesne profits or directing an inquiry as to such mesne profits ;*
- (c) directing an inquiry as to rent or mesne profits from the institution of the suit until-*
  - (I) the delivery of possession to the decree-holder*
  - (ii) the relinquishment of possession by the Judgment-debtor with notice to the decree-holder through the Court, or*
  - (iii) the expiration of three years from the date of the decree, whichever event first occurs.*

*(2) Where an inquiry is directed under clause(b) or clause(c) a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.*

10. With regard to the question No.1 whether the provisions laid down under Sections 122 and 123 of Transfer of Property Act 1881 are being



property appreciated or not it would be relevant to go through the paragraph

WEB COPY

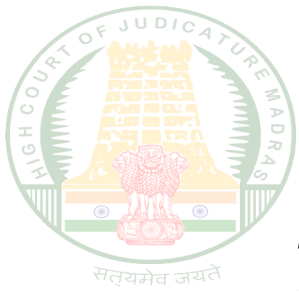
Nos.16 and 17 of the said Judgment and the same is as follows:

*“16. In AIR 1927 Privy Council Page 42 in the case of Kalyanasundaram Pillai .. Vs.. Karuppa Mooppanar and others, a full Bench has held that when a donor of immovable property has handed over to the donee an instrument of gift duly executed and attested and the Gift had been accepted by the donee the donor has no power to revoke the gift prior to the registration of the instrument.*

*“17. This has been followed by another Judgment in AIR Patna Page 140 in the case of Mst. Samrathi Devi Vs. Parasuram Pandey, stating that the fact of the deed being handed over by the Donor to the Donee was sufficient evidence of his having accepted the Gift and the acceptance of the said document was a relevant fact that prove the acceptance of the gift by him.....”*

With regard to question No.2 Whether the Court below has properly applied the import of meaning under Section 34 of Indian Evidence Act regarding the admissions made by the respondent therein is answered in Paragraph No.13 and the same is as follows;

*13. “..... Therefore, a conjoint reading of the evidence of both Devika and Sivaprakasam in both the suits in the light of Ex.A.1 said above shows that the late Shanmugam had also delivered possession of the suit property to the settlee, his daughter. Till his death in 1991 the said Shanmugam had not challenged the said settlement. The Trial Court miserably failed to note that once a*



WEB COPY



S.A.No. 826 of 2006

*settlement deed is property executed voluntarily and duly registered it comes into effect immediately and the property vests on the settlee and unless it is set aside by the Court for valid ground and for vitiating circumstances it is valid for all time and cannot be questioned at all”*

11. With regard to whether the provision found in Order 20 Rule 12 of C.P.C regarding mean profits and future damages are being properly appreciated by the Court below or not it would be relevant to go through the paragraph No.23 and the same is extracted hereunder:

*23. The appellant, who is the plaintiff in O.S.No.9044-95, apart from claiming declaration that she is the owner of the suit property, she has claimed recovery of possession and she has also claimed mesne profits from 09.09.1994 till the date of filing of the suit and for future damages at the same rate and an issue has been framed but the trial Court has not in the least discussed the same and given a finding on the same. However, as the respondent Bhaktavatsalam is in the possession and enjoyment of the suit property, he is liable to pay the mesne profits as claimed by the appellant.*

12. Hence, it is made clear that the Courts below has properly construed the provisions of Sections 122 and 123 of Transfer of Property Act 1881 and the provision found in Order 20 Rule 12 of C.P.C regarding mesne



S.A.No. 826 of 2006

profits and future damages.

WEB COPY

13. This second appeal revolves around two aspects. First one whether the settlement deed dated 16.02.1983 is valid or not and the second one is whether it was acted upon or not. Deceased Bhaktavatsalam denied the execution of the settlement deed but he has not proved it before the Court below. Further the said Shanmugam had not challenged the said settlement till his death and the said aspect was not taken note by the Trial Court. It is a established fact as per law that once a settlement deed is properly executed voluntarily and duly registered it comes into effect immediately and the property vests on the settlee and unless it is set aside by the Court for valid ground and for vitiating circumstances it is valid for all times and cannot be questioned at all. Hence whether the settlement deed dated 16.02.1983 is valid or not and the second one is whether it was acted upon or not is answered accordingly.

14. In view of the above facts it is made clear that there is no merits in the contentions of the petitioner and this second appeal deserves to be dismissed and the Judgment and Decree dated 07.04.2006 in A.S.No.211 of 2004 passed by V Additional Judge, City Civil Court, Chennai is confirmed.

11/13



S.A.No. 826 of 2006

No order as to costs. The appellant is directed to handover the possession within a period of three months from the date of receipt of a copy of this order.

**19.03.2025**

Index : Yes / No  
Internet : Yes/ No  
smn  
To

1. The Additional Judge, City Civil Court, Chennai
2. The XVI Assistant Judge, City Civil Court Chennai

**T.V.THAMILSELVI, J.,**

smn



WEB COPY



S.A.No. 826 of 2006

S.A.No. 826 of 2006

19.03.2025